PDF PAGE 1, COLUMNS 1, 6, & 7

PDF PAGE 1, COLUMN 1

Little Progress in First Session on Frank Trial Motion

PDF PAGE 1, COLUMN 6

STRIKER CHEERED AS HE SPEAKS IN COURT

Two Men Fined for Alleged

Threats—Strikes Meet and Parade

Three striking operatives of the Fulton Bag and Cotton mills were arraigned in police court Wednesday morning on charges of disorderly conduct. There was a large crowd of operatives in the court room as spectators and Judge Broyles had to rap for order during an impassioned speech of one of the men on trial.

R. L. Wood and W. E. Fleming were fined $10 and costs each, it being alleged that Wood had threatened General Manager G. A. Johnson and that Fleming had stopped machines to prevent their operation but those who had not struck. Will Tulin was bound over, it being alleged that he had threatened to strike several officials of the mill.

Fleming made an excited speech, in which he bitterly attacked the cotton mill management and was vigorously applauded until the recorder insisted that the demonstration cease.

Several officials of the mill testified in reference to the alleged threats of violence and Attorney Verlin Moore, representing the mills, urged the recorder to impose fines upon the men.

Tuesday afternoon a committee of 100 strikes called upon Mayor Woodward and complained that the police were being used to intimidate them . Mayor Woodward discussed the complaint with Chief Beavers, but was told that the police had done nothing

except keep down disorder. Only two policemen are now stationed at the mill.

The strikers are planning a big parade during the day in the hopes of getting other operatives to quit their machines.

Following a visit from four employees of the Fulton Bag and Cotton Mills Wednesday morning, Chief of Police Beavers gave instructions that a case of disorderly conduct against General Manager G. A. Johnson, who, the committee claimed, had used offensive language in the presence of women.

At noon a number of the strikers and their sympathizers, headed by a band, paraded to the corner of Carroll and Fennell streets, where an open air meeting was held and several speeches made. There was no disorder.

At 7 o’clock p. m. another meeting will be held at 112 Central avenue and a committee named to confer with the superintendent toward reaching an amicable agreement. A similar gathering to that at noon will also be held Thursday.

PDF PAGE 1, COLUMN 7

MANY LONG WRANGLES

MARK DAY IN FIGHT FOR FRANK'S LIFE

"You Would Hang a Man Be-

cause of a Stenographer's

Failure to Dot an 'I' or Cross

a ‘T’ Rosser Tells Dorsey”

FACTS ARE MISSTATED,

THE SOLICITOR ANSWERS

Dorsey Charges That Amend-

ed Motion Is Replete With

Misstatements—Only 12 of

115 Grounds Passed On

By prolonged discussion and disputes upon every detail, neither side conceding, anything to the other, the state and the defense at 1 o’clock on Wednesday afternoon had progressed with the hearing of Leo M. Frank’s motion for a new trial, to the thirteenth ground of the 115 cited in that motion. Less than four hours, from 9:20 a. m. until 1 p. m., had been expended upon twelve of those grounds, and the thirteenth was under discussion when court adjourned for lunch. The hearing resumed at 2:30 o’clock Wednesday afternoon. Apparently it cannot be ended before Saturday.

Attorney Rosser’s ironic charge that the solicitor is trying to hang a man “upon the crossing of a ‘t’ and the dotting of an ‘i’,” enlivened the morning session; but the solicitor persisted deliberately in his splitting of hairs with the defense, declining to concede any point. The result of this was that in one seemingly minor particular or another nearly all the twelve grounds covered by the hearing Wednesday morning were amended, either by the inclusion of questions and answers from the evidence when the solicitor contended that unwarranted constructions had been placed upon that testimony, or by the changing of phrases and the commission of words—as, for instance, when the solicitor’s contention was upheld by the judge that in this or that instance the defense named reasons for objections additional to those which it registered at the time of trial.

The morning’s session was a wrangle over dry points. Each ground of the motion, up to the thirteenth, was considered seriatim. Inasmuch as Judge Roan’s certificate upon the motion will seal it against further change it was important for both the state and the defense, from a technical standpoint, to win every dispute.

NO WITNESSES.

No witnesses were examined, and none will appear at the hearing save by deposition. The convicted man, Leo M. Frank, was not present and will not attend the hearing. Deputy Sheriff Plennie Minor was in charge of the improvised courtroom and none was admitted to it save the lawyers and newspaper men. This was because of the cramped quarters of the state library anteroom in which the hearing was convened on account of the cold at the courthouse.

The defense will introduce in addition to the numerous affidavits it has filed already, a number of depositions upholding the character of the citizens who swear that Juror Henslee was prejudiced. The state also has other affidavits to introduce. Two of these will be by W. E. Mote and R. H. McKenzie, citizens of Carroll county, who swear that they would not believe W. P. Neill on oath. The state expects also get an affidavit from F. V. L. Smith, the only juror from whom it has not heard, who is now in New York.

Solicitor Dorsey was assisted by E. A. Stephens in upholding the state's case before Judge L. S. Roan. The defense was represented by Attorneys Luther Z. Rosser, Reuben R. Arnold and Stiles Hopkins.

BEGAN HEARING AT 9:20.

The hearing began at 9:20, in an anteroom of the state library, Judge Roan asked the attorneys if they had agreed upon a brief of evidence. Solicitor Dorsey said that they had with the exception of one point. The financial statement and Frank's statement relative to it were included in the brief in full, and that everything else had been boiled

(Continued on Page 2, Column2.)

PDF PAGE 2, COLUMN 1

Many Long Wrangles in Frank Hearing

(Continued From Page 1.)

down to the finest point. He considered that it would prejudice the state's case to have this statement appear in full, it was unnecessary, he said, for the reason that expert witnesses testified to the length of time it would take to make out this sheet.

Attorney Arnold said that the whole object of the introduction of the financial sheet into the case was to show its volume.

The discussion was brief, and Judge Roan ruled with the defense, holding that the financial sheet could not be well reduced.

Solicitor Dorsey said that he wanted to state but not to insist upon another objection to the brief. He said that the testimony of the state's witnesses did appear in proper sequence in the brief. While he thought that in the brief the case should have been built as he built it in the court, he would not press the point, he said.

Before the case progressed, any further Attorney Rosser said that the solicitor had promised to furnish the state's affidavits to him on Monday, but that he had been unable to get them until Tuesday, and that that had delayed the securing of some affidavits in rebuttal, which he expected to have right soon. The solicitor said that he had at the hearing one or two affidavits which he had not been able to get by Tuesday, and that he expected additional affidavits by mail.

It was agreed that these affidavits could be introduced later during the hearing.

Attorney Leonard Haas then began the reading of the amended motion, section by section.

SLOW PROGRESS MADE.

Thirty-five minutes later only two of the grounds mentioned in the amended motion for a new trial had discussed. The lawyers disputed every detail. No agreement then had been reached regarding them and Judge Roan had not ruled upon them. There are 115 of these grounds.

The first ground, starting the argument, cited that part of the trial evidence in which the negro Newt lee answered the solicitor's question if he did not talk longer with Detective Black than with Leo M. Frank, the convicted man, at police headquarters. In the evidence appeared the solicitor's explanation of the question, that the reason he asked it was to draw comparison and show that Frank had not tried sincerely to get anything from the negro.

As soon as the ground of the motion was read, Solicitor Dorsey objected to it being employed as a ground at all. The defense did not object to the evidence at the time of trial, said he, except on the contention that it was not in rebuttal of something else.

Mr. Arnold contended "we are not bound by the record." In many instances, said he, court stenographers are wont to note "counsel argued" and to pass up specific mention of grounds for objection.

Mr. Rosser insisted that objection was made at the time. He remembered it distinctly, he said. "And, of course, the court remembers," said he. He declared that the court had ruled that when objection on one class of evidence was overruled, the overruling applied to implied objections on other similar evidence.

Mr. Dorsey replied that every objection made by the defense went into the stenographer's record. The stenographer always put them down, said he. The defense was particular to urge all of its objections at the trial, said he. The law requires them to be particular about that at the time the evidence is given. "The gentlemen of the defense must stand on what they did at the trial," said he.

Mr. Rosser asked Judge Roan if he did not remember the objection. The judge answered that he remembered some kind of objection was offered, but he could not attempt to distinguish what kind it was.

Finally the point was passed over, “We will go on to the second point and take this up later,” said Judge Roan.

SECOND GROUND ARGUED.

The second ground of the motion was read. It was similar to the first, citing the evidence that Solicitor Dorsey asked Lee whether he, the witness, talked longer to Frank at police station than he talked to Attorney Arnold at the county jail. The defense made the same point.

The solicitor contended that the defense made no objection at all during the trial to this question and evidence. He added that he had no recollection whatever of the judge ruling that all his decisions would apply to similar points after one had been passed upon. He recalled that the judge had stated this position with reference to certain kinds of testimony by the negro Conley, but said that was all.

Mr. Rosser arose and with emphasis addressed Judge Roan, shaking his finger across the table at the court. “Your honor, you can’t forget those objections,” said he. “I did discus this point with your honor at the trial, always respectfully, but so sharply that your honor can’t forget it. And if our understanding that those rulings applied to similar classes of evidence after one objection had been made was not correct, then we have been misled and horribly mistreated. It would be an outrage upon us and upon our client.”

Mr. Arnold declared that never in the history of law was not this rule laid down in long trials.

Mr. Dorsey: “Your honor, this is all strange stuff to me. It is not in the record. If the court’s stenographer ever failed to get down everything, I never heard of it. In the first place, I contend

the stenographer’s record is correct. No man on earth can just ‘remember’ all of the objections he may have urged in a trial. According to law the defense can’t get up here now and urge grounds that were never before urged. Right here is the record of this trial. That is all we have to go by. We can’t go by your honor’s memory, or Mr. Rosser’s memory, or Mr. Arnold’s memory. I stand on the record.”

Mr. Rosser declared “if we don’t come to some understanding on this we’ll be here two weeks.”

Judge Roan passed this point, too, withholding his decision, and directing that the third point of the motion be read.

THIRD GROUND.

The third ground was upon Detective Starnes’ testimony comparing the demeanor of Lee and Frank on the morning after the murder. The lawyers on both sides squabbled over this for some twenty minutes. Solicitor Dorsey contending that in the amended motion the defense claims to have stated its objection on this point at the trial whereas he disputed that claim, upon the authority of the record.

The upshot of this discussion was that one phrase was stricken from the motion, the phrase being Starnes’ testimony that Lee did not try to get away. That had been ruled out at the trial. The attorneys for the defense complained again that the stenographers did not get down all of their objections.

Starnes’ recountal of his telephone conversation with Frank, wherein. he stated that Frank was “guarded,” was the fourth ground of the motion. The defense cited this as “irrelevant, immaterial, a conclusion, and illegally prejudicial to the defendant's case.”

The solicitor replied to this by saying that the only argument by the defense at the trial on this point was that the statement was a conclusion. Further, said he, Starnes’ statement was drawn out in rebuttal of a question asked by Mr. Rosser, wherein Mr.

Rosser had asked the witness if the telephone conversation was not a “casual” one. The brief of evidence was amended on this point, and the motion itself was changed.

FACTORY DRAWING.

The drawing depicting the factory, introduced by the state early in the trial, from which a “key” was erased at that time to meet Mr. Rosser’s objections, was the basis of the fifth ground in the motion for a new trial. Mr. Dorsey agreed to allow this ground to stand intact as stated, providing the words “as the movant contends,” were added. The phraseology of the section was changed slightly.

Detective Black's testimony that Frank, the convicted man, was not nervous when he, the detective, had occasion to talk with him about another matter a month before the murder, was the basis of the sixth ground argued for a new trial. Judge Roan ordered a change here so as to include in the motion the question put to the witness and the witness’ answer, sustaining an objection by the solicitor that the defense itself had drawn a conclusion unwarranted by the question and answer.

The seventh ground was Black’s testimony that Frank employed counsel at 8:30 o’clock on Monday morning after the murder. Solicitor Dorsey objected to the word “employed,” contending that the witness did not make the statement, but testified instead that Rosser and Haas appeared at police headquarters and that Haas said in Frank’s presence that he was counsel for Frank.

The solicitor also objected to the motion setting out that the defense had objected at the trial to this on the ground that it was immaterial and irrelevant. The defense agreed to strike the word “immaterial,” and to the inclusion of the question and answer in this section-although Mr. Rosser protested that it was a matter simply of beating the devil around the bush.

EIGTH GROUND.

The eighth ground of the motion for a new trial was that the judge erred in refusing to let Black tell of Lees admission to the ownership of the bloody shirt. Solicitor Dorsey objected to this ground, stating that the defense in its argument at the trial that this statement should be admitted, had not contended that it was a part of the res gestae.

Mr. Rosser seemed to lose patience at this point and addressed Judge Roan warmly.

“We are trying a man here for his life,” said he. “We ought to try him on broad legal principles. Instead of that we are peanutting and fly-specking around here as if we were suing a railroad for killing a cow. I don’t know whether it is in the record or not, but I do know that it would have been nonsense if I did not argue that we wanted this answer as a part of the res gestae. The record is not perfect by any means. We don’t claim to have a perfect machine that will get down every word. And we don’t put the record up against the memory of the judge. The law makes the judge’s memory the authority in matters of this kind, if the record does not agree with it. The solicitor is trying to hang a man because of the failure of the stenographer to dot an i or cross a t.”

At the court’s order, the phraseology of the eighth motion was changed to such an extent that Mr. Arnold declared the ground had been nullified completely.

NINTH GROUND.

The ninth ground of the new trial motion alleged that the court erred in admitting Darley's testimony that Lee was composed on the morning of the murder. Mr. Dorsey argued that no objection on this point appeared in the record. Mr. Rosser and Mr. Arnold contended that it was agreed at the trial that where the court ruled on one point and later other similar points arose, the defense would not repeat its objections but would leave them to be understood. Judge Roan held that it was so agreed. “It is strange the stenographer got every one of the state's objections,” said Mr. Dorsey, “and missed so many of theirs.”

THE TENTH GROUND.

The tenth ground of the motion for a new trial related to the negro Conley's testimony, in its narrative form, regarding alleged perverted acts by the defendant. This was passed over after considerable argument when the court agreed, at request of the solicitor, to certify that the objection to this evidence was made at the trial after Conley had been cross-examined upon it for a day and a half. “A day and a half and two minutes,” interrupted Mr. Rosser sarcastically. “Be accurate about that.”

Ground number eleven related to this. same testimony in its more detailed question and answer form. The defense claimed that it objected at the trial on the ground that this evidence dealt with other alleged crimes by the defendant and, therefore, was illegally prejudicial to his case. Solicitor Dorsey disagreed, saying the objection then was solely upon the ground that the testimony was immaterial and irrelevant. Judge Roan let the motion stand as it was.

The twelfth ground of the motion related to Conley's testimony about having watched for Frank at the factory on previous occasions. The motion alleged that after the court had ruled out an attempt to get this evidence before the jury, the solicitor persisted and got the evidence in anyway. It developed, in dispute by the solicitor, that this question was ruled out by the court: “What did you see him do when the young ladies came there?” This was ruled out as immaterial. Then the solicitor asked, “What did you do when the young ladies came there?” This question was allowed, and other evidence followed it. After about half an hour of argument, Judge Roan refused to certify that the solicitor had been allowed at the trial to elicit testimony already ruled out. That portion of the motion was stricken.

“I don't mean to quibble about this thing, and I don't call it quibbling,” said the solicitor during his argument. “I am only asking your honor to give me a true certificate.”

The two questions and answers, with the judge’s ruling on one of them, were inserted verbatim in the motion. Mr. Dorsey contended that the defense made no objection to Conley's testimony about watching for Frank, until they filed their omnibus objection in writing some time later.

The thirteenth ground of the motion dealt largely with the omnibus objection, in which the defense again stated that the solicitor disregarded the court's ruling. It was agreed to strike that allegation from the motion. The attorneys were arguing in the midst of this when court adjourned at 1 o’clock.

When the arguments are finally concluded and the briefs submitted, it may be several days before Judge Roan announces his decision in the case. Often a judge in similar motions does not render his decision for weeks after the argument has been completed. In the case of the Frank motion, however, it is expected that Judge Roan will make his decision after a very brief interval, for the reason that he is anxious to clear the way for the resignation of Judge Ben H. Hill from the court of appeals, and his own resignation from the Stone Mountain circuit judgeship. The defense opened the case. Luther 7. Rosser, Reuben R. Arnold, Herbert J., and Leonard Haas, and Stiles Hopkins, appearing in the court for Frank. The solicitor general was assisted by E. A. Stephens.

Should Judge Roan refuse to grant Frank a new trial his attorneys can, of course, appeal from his ruling to the supreme court. In event Judge Roan does grant a new trial an interval of probably five months will elapse before the second trial is entered into.